

Swinomish Tribal Community
Ground Water Quality Standards Act- Expanded Version
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General Ordinance

DRAFT

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Introduction

The only economical source of drinking water for Reservation residents is supplied by an aquifer underlying the Reservation. Tribal provision of drinking water to these residents and regulation of groundwater impact activities fulfills one of the Tribe's responsibilities of overseeing and protecting the health, safety, and welfare of all those who reside within the Reservation. It is therefore essential that the Tribe protect the aquifer from contamination for present and future water users. This Act is one of the first elements in establishing a comprehensive ground water quality protection program.

Purpose of Act

The purpose of this Act is to establish Tribal ground water standards for identified contaminants and institute regulations governing any activity potentially impacting ground water in order to prevent or eliminate the planned or accidental discharge of contaminants to the Reservation's aquifer.

Relationship to Existing Statutes

This Act compliments and provides planning and enforcement support to several existing Tribal ordinances and plans. Those with provisions protecting Reservation groundwater include:

- Title 14. Planning Commission. 1964. Duties, Responsibilities and Authority, VII. Official Controls, VIII. Forms of Control, and XI. Other Duties and Authorities of Commission
- Environmental Policy Act. 1977, All provisions
- Title 17. Zoning. 1977, Chap. 17-3.050, Water Preservation Districts, 17-6.040, Official Controls, Administration and Enforcement.
- Title 15. Swinomish Interim Water Code. 1980, 15-1.030 Prohibition, 15-1.040. Enforcement, 15-1.050. Penalties.
- Title 16. Health and Sanitation. 1981, Section XIII, Enforcement
- Coastal Zone Management Plan. 1986. Sub-Section 6.02. Violations and Penalties.
- SCEPA. 1988. II. Administrative Body, III. Administrative Appellate Body.
- Title 22. Utility Authority. 1990. Article XVII, Violations of Ordinance.
- Water Resources Protection Ordinance. 1990. All provisions.

Extent of Application

Geographic: This Act applies to all ground water within and bordering the Reservation that occurs in a saturated zone or stratum beneath the Reservation land or water surface.

Individual: The provisions of this Act apply to any person proposing to: 1. Manufacture, use, transport, treat, store, discharge or apply any of the contaminants listed in this Act; 2. combine substances that result in a contaminant as identified in this Act, and 3. use groundwater for other than domestic use.

Exceptions: This Act does not apply to contaminant concentration found in saturated soils where chemicals or nutrients are applied at acceptable agronomic rates for agricultural purposes or under approved land treatment rates if those applications will not cause documented pollution of ground water below the active root zone.

Definitions

"Activity" means any site, area, facility, structure, vehicle, installation or discharge which may produce pollution.

"Beneficial Use" means the uses of waters within the external boundaries of the Reservation which include but are not limited to use for domestic, stock watering, industrial, commercial, agricultural, wildlife and fish maintenance and enhancement, recreation, preservation of environmental and aesthetic values, and other compatible uses.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For purposes of this act, the term will apply to all substances on the U.S. Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in groundwater or does naturally occur but at greater than natural levels.

"Criteria" means numerical or narrative values that represent the maximum allowable contaminant concentrations that may be present in groundwater.

"Department" unless otherwise stated, means the Tribal Planning Department.

"Early Warning Value" means a concentration of a potential pollutant set in accordance with Section XX that is a lesser percentage of a ground water quality enforcement limit designed to serve as an indicator of approaching an established enforcement limit.

"Maximum Contaminant Level" or "MCL" means the maximum concentration of a contaminant established by the U.S. Environmental Protection Agency under the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in 40 C.F.R. as presently promulgated or subsequently amended, whichever concentration is more stringent.

"Naturally occurring ground water quality" means water quality that is tested and found to contain no measurable anthropogenic contaminants. Such waters may contain contaminants resulting from its geologic makeup or vegetative cover.

"Permit" means a department authorization, license, or equivalent control document issued to a facility, activity, or entity authorized to treat, store, transport, dispose, or discharge materials or wastes, or withdraw ground water for any use.

"Person" means any political subdivision, individual, government agency, municipality, industry, corporation, association, firm, or any other entity whatsoever.

"Pollution" means the contamination, or alteration of the physical, chemical or biological properties of any water within the external boundaries of the Reservation, including change in temperature, taste, color, turbidity, or odor, or discharge of any liquid, gaseous, solid, radioactive, or other substance as will or may create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other beneficial uses, or to livestock, animals, birds, fish or other aquatic life.

"Primary Contaminant" means a contaminant that is not a carcinogen but is considered health threatening.

"Secondary contaminant" means any contaminant in groundwater that may alter its taste, color, odor, or appearance. At high levels, such substances may adversely affect human health and impair other beneficial ground water uses.

"Secondary maximum contaminant level" means the maximum concentration of a secondary contaminant in water established by the U.S. Environmental Protection Agency under the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in 40 C.F.R. 143 as presently promulgated or as subsequently amended or promulgated, whichever concentration is more stringent.

Anti-Degradation Policy

No degradation shall be allowed of ground waters within the external boundaries of the Reservation that would interfere with or injure existing and future beneficial water uses.

Ground waters that have been sampled by EPA-approved methods and found to be better than established standards shall be protected at those higher documented levels. Contaminants shall not be allowed to enter such waters that will reduce their existing quality.

Naturally occurring ground water quality, if documented to be less pure than established standards, shall constitute the standards for that area. No degradation shall be permitted to further lower the quality of those ground waters.

Ground Water Pollution Prevention Measures

The Tribe recognizes that Reservation groundwater has the potential to support a variety of beneficial uses and the Tribe has determined that:

1. Drinking water is generally the beneficial use requiring the highest quality of ground water.
2. Providing protection to the level of drinking water standards will protect the greatest variety of present and planned beneficial uses.
3. Some beneficial uses may exist within the Reservation that require more stringent protection than that provided by the application of drinking water standards. Higher enforcement limits shall be set for those identified uses on a case by case basis.

Ground Water Quality Documentation

Water quality sampling and analysis may be carried out by the Tribal Planning Department or Health Department for any activities listed in this Act. Cooperative Agreements may be entered into between the Tribe and any EPA approved water quality sampling entity to document water quality to determine local groundwater conditions for levels of aquifer protection and determine if the EWV's or MGCL's established by this Act have been exceeded.

Ground Water Quality Criteria

The purpose of the Criteria is to protect beneficial water uses by establishing maximum ground water contaminant levels (MGCL's) as criteria that cannot be exceeded for a variety of identified water pollutants. GWQ criteria are those values, or MGCL's assigned to each listed contaminant that, if exceeded, could cause a known human health hazard.

The following rules shall apply to all Reservation ground water.

1. Ground water contaminant concentrations shall not exceed the MGCL criteria listed in Table 1., except for those groundwater conditions described under Extent of Application and Anti-Degradation Policy.
2. Criteria for non-carcinogens are established at the level at which no known or anticipated adverse effects on human health can occur, as published under the federal Safe Drinking Water Act (42 U.S.Q 300f et seq.)
3. Criteria for carcinogens are those that are anticipated to result in a total incremental cancer risk of less than 1 in 1,000,000. These were estimated using the equation found in Table 2.
4. Exposure to multiple contaminants from a variety of sources by ingestion, contact, or absorption, is assumed to be cumulative unless proven otherwise.

5. Contaminants which have no numeric criteria established shall be assigned enforcement limits in accordance with the following Section.

The following Table lists 29 non-carcinogens, 94 carcinogens, and four radionuclides as potential ground water contaminants. The legally enforceable maximum contaminant levels listed for each cannot be exceeded without the threat of Tribal legal action.

These criteria, or MGCL's comply with, and are at least as stringent as EPA-approved guidelines. These standards will be modified and expanded as required to conform to or exceed future EPA recommended standards.

Ground Water Quality Enforcement Limits

Ground Water Quality Enforcement Limits are those generally more stringent values assigned to a listed contaminant that may be legally enforced to prevent ground water from reaching or exceeding the listed standards. These are established to prevent pollution from extending beyond a Zone of Compliance as established in this Act. These Limits are based on proven methods of pollution prevention, control, and treatment and shall not be less stringent than listed criteria except as established in the Scope of Application and Anti-Degradation Policy.

Enforcement limits shall be established by the Planning Department. They shall conform as close to natural ground water quality values as possible and shall consider, but not be limited to, Tribal land use plans, policies, and ordinances.

Where a criterion is not established for a man-made contaminant, the enforcement limit shall be the level at which a contaminant can be reliably quantified by a Dep. of Ecology approved analysis method.

Landowner notification of Enforcement Limits may be provided through a Tribal well or waste discharge permit, or other Departmental permit or Order.

Enforcement Limits shall be established and met within a Zone of Compliance as determined by the Planning Department. Ground water quality within a ZOC may temporarily exceed an Enforcement Limit while an activity is under an enforceable schedule of compliance.

Zone of Compliance

The Zone of Compliance is the site, or area controlled by the Enforcement Limit extending from the surface to the lowermost saturated water depth that could be potentially affected by the permitted activity. The ZOC is the point or delineated area where water quality impacts of an activity are measured against the enforceable standards and where water quality cannot exceed established enforcement limits.

The Department shall delineate the Zone of Compliance for each activity potentially impacting ground water quality. The zone of compliance shall be established as close to the source of an

activity or potential pollution as technically feasible.

A ZOC may be established: 1. within landowner boundaries and include the area of potential subsurface contamination carried by groundwater flow, and/or 2. established outside of the owner's property at the point of discharge or potential surface and subsurface contamination area.

In delineating a zone of compliance, the Department may consider the: 1. surface area within which the EL must be met, 2. depth of groundwater saturation, 3. effectiveness of all proven methods of prevention, control, and treatment, 4. the type, volume, and mobility of the contaminant, 5. design and life expectancy of the activity, 6. existing and anticipated land and water uses, and 7. potential remedial options.

The ground water quality within the Zone of Compliance may temporarily exceed the Enforcement Limit during the time the activity is under an enforceable schedule of compliance as established under Sec.XX, Enforcement.

Early Warning Values

The purpose of Early Warning Values (EWV's) is to prevent pollution by providing early detection of increasing contaminant levels that may approach or exceed enforcement limits. Detection shall be by approved monitoring and sampling methods.

EWV's shall be established when the Enforcement Limits for a specific area are sufficiently above existing water quality so that incremental changes in water quality can be measured.

The Department shall establish EWV's as an incremental percentage of the enforcement limits. These will be based on the physical, chemical, and biological properties of the contaminants, the effectiveness of proven treatment, anticipated increases in contaminant levels within the Zone of Compliance, and possible harm to beneficial uses.

When monitoring indicates that an Early Warning Value is attained or exceeded within a Zone of Compliance:

1. The responsible party must call and write the Department within five days of detection. Required information shall include past and present concentrations of all monitored and sampled contaminants, and the locations and dates of those sampled.
2. The Department may permit the responsible party to continue normal activities, or require them to resample, or submit a document verifying ground water changes and propose alternative operation methods.
3. The department may determine there is a likelihood of exceeding the enforcement limit and propose alternate methods of operation to limit or avoid pollution.

Exceeding the EWV's is not a violation of this Act, unless the responsible party fails to notify

the Department in accordance with the preceding sub-section.

Best Design and Operational Standards

The purpose of requiring "Best Design and Operational Standards" is to insure that all known, available, and proven ground water protection systems are constructed and used by any activity that could impact groundwater.

"BDOS" are those proven management, construction, storage, treatment, transport, application, and disposal practices designed to insure that no accidental discharge, or planned land application will result in groundwater contamination.

Examples of BDOS are:

Design: product labeling, double-walled container shipping and storage containers, cement foundation and covered storage with temporary spillage containment, lined disposal areas, storm water detention reservoirs

Operation: certified training for use and application, proper land treatment application timing and rates, scheduled pump-out/emptying services, sub-surface pollution detection systems, scheduled ground water sampling, and periodic Tribal inspection.

All BDOS must be certified by appropriate agencies and are required to be identified and described as part of the groundwater administration process under Section XX of this Act.

Ground Water Regulation Administration

All regulatory measures associated with groundwater protection shall be administered by Planning Department staff in cooperation with Health Department staff.

Ground Water Quality Management Plan

The purpose of this subsection is to establish minimum requirements for evaluating the impacts of a specific activity on ground water quality, to prevent pollution by early contaminant detection, and provide a useable action plan in the event of exceeding GW Criteria or Enforcement Limits.

At the Departments determination that an activity has the potential to pollute groundwater, a responsible party shall prepare and submit a groundwater management and emergency procedures plan within the Zone of Compliance that, at a minimum shall consist of:

1. Soil and hydrogeologic characteristics
2. Chemical, physical, and biological properties of any potential contaminants to be used by the applicant.
3. Description of activity operation and use of BDOS, or pollution prevention measures as described in Section XX.

4. Description of groundwater monitoring to be used at various aquifer levels at selected sites and frequency of monitoring.
5. Any water withdrawal and/or effluent discharge monitoring.
6. A mutually agreed on quarterly site visit by the Department.
7. An emergency action plan to be implemented in the event of an accidental discharge that includes a description and proposed use of proven cleanup measures.

All ground water quality monitoring and restoration measures are the obligation of the responsible party. In the event that the party fails to respond to needed cleanup, the Department shall undertake any measures it deems necessary to restore the ground water to acceptable levels of use and charge the party for all costs.

Permits

Permits issued or reissued by the Department shall be conditioned in such a manner as to authorize only activities that will not cause violations of this Act.

Existing Permits. Certain activities permitted by the Tribe have the potential to adversely impact ground water. Such activities requiring permits by the Tribe presently include: 1. septic systems, 2. community water supply systems, 3. sewer systems, 4. solid waste disposal sites, 5. individual wells, 6. building, 7. rock and mineral excavation on Tribal lands, 8. pesticide and herbicide application, and 9. subdivision. The statutes pertaining to these permits are listed in Section XX, Relationship to Existing Statutes.

New Permits. In addition to existing permits required by the Tribe, permits shall be required for any activities resulting in the manufacture, use, storage, treatment, transport, discharge, and application of contaminants listed in this Act, not addressed by existing permits. This also includes the withdrawal and/or use of ground water for other than domestic use and its discharge or disposal.

The need for additional permits for any of the above activities shall be decided on by the Department and their conditions of issuance determined on a case by case basis. Anyone wishing to engage in any of the above activities shall obtain and submit an application to the Department.

The application shall contain at a minimum,

1. Applicants name and size and location of property where the activity is proposed.
2. A description and purpose of the proposed activity.
3. Location of the well and quantity of water, in gallons per day or per pumping interval, if well is for other than domestic use.
5. Locations of any other wells and septic systems within 500 feet of the proposed activity.
6. Any other information as required by the Department

The Department shall review the Application to determine if the proposed activity conforms to this and other Tribal statutes. If the proposed use is in conformance with Departmental plans,

policies and ordinances, a permit shall be issued.

Any applicant for a new or reissued permit may be required to evaluate the potential impact of his/her activity on the groundwater in accordance with the two preceding sections.

If a Permit holder is in compliance with the conditions of this Act and their activity results in a violation of this Section, the Department may elect to precede any civil penalty with a compliance order or permit modification.

Special Protection Areas

Groundwaters that require special consideration for increased protection because of one or more unique characteristics may be designated as Special Protection areas.

Special Protection areas may include, but not be limited to:

1. groundwaters that support a beneficial use or ecological system requiring more stringent criteria than drinking water;
2. groundwaters that are identified as wellhead protection areas or groundwater recharge areas that are vulnerable to pollution.
3. any other critical groundwater areas that require stringent regulations to prevent aquifer contamination.

Special Protection Areas may be proposed by the Department, SCEPA, or any interested person. A request for designation shall include:

1. reasons and supporting data for designation, 2. description of the proposed area including geographic and hydrologic boundaries;

The initiator of the request shall hold a public meeting in the affected area and contact interested parties including local residents, the Department, and affected local agencies, and submit comments to the Department.

If the Department determines that said groundwaters contain one or more of the characteristics described in subsection XX of this section, and such designation is in the public interest, it shall designate the area as a Special Protection Area.

Enforcement

The purpose of this section is to insure that ground waters meet the requirements of this Act at all times and at all places within the Reservation.

No one shall engage in any activity that violates or causes a violation of this Act.

Enforcement of the provisions of this Act shall reside with the Planning Commission and Senate.

Use of Available Measures

This Act shall be implemented and enforced through all procedural, legal, equitable, and other methods available to the Tribe. This may include Tribal water withdrawal approval, permits for waste discharge, construction, and solid waste, and other activities, regulatory orders, court actions, plan approval, and performance standard requirements.

Inter-Agency Agreements

The Tribe may pursue agreements with other regulatory agencies to implement and enforce this Act. Candidate agencies include: The Federal EPA, DOI, IHS, the state DOE, DH&HS, and County Health Dep.

Complaints and Inspection

Complaint Process - Any person may file a written complaint against any individual who he/she feels may be in violation of this Act. Such complaint shall describe the potential polluting activity and its location and be filed with the Planning Department.

Inspection - Within two weeks of receiving the complaint, a Notice of Inspection will be issued to the responsible party and the identified property or premise entered and evaluation made to determine compliance.

Any Planning Commission, Senate, or Planning Department member shall be permitted access to any and all landholdings and premises within the Reservation upon issuance of a "Notice of Inspection" at any reasonable time to determine compliance with this Act. Refusal to allow inspection within 24 hours notice shall constitute a violation of this Act.

Violation Proceedings

Failure to comply with the provisions or standards of this Act or any permit issued hereunder shall constitute a violation.

Notice of Violation. If a violation is discovered during inspection, Planning Dep. staff shall issue a "Notice of Violation" to be sent by certified mail within five days of determination. The Notice shall state the nature of the violation and shall specify a date, time, and place for a hearing on the allegation before the Planning Board.

Hearing . A hearing date shall be set not less than five, or more than seven, days after Notice issue. Within seven days after the hearing, the Board shall issue an order indicating its findings after hearing all relevant evidence from the Planning Department staff and responsible party.

Schedule of Compliance. If a violation is determined to have occurred, a Schedule of Compliance shall be delivered to the offender setting out specific actions to be taken to remedy the violation and include enforceable time tables for the completion of each remedial action.

Appeals. Any party aggrieved by a determination of the Planning Commission shall have the right of appeal to the Senate within two weeks of the initial decision. All Senate decisions are final.

Fines. Violations as determined by Sections XX, of this Act are deemed a civil offense punishable by fine not to exceed \$XXXXXX each day the violation continues. A Court ordered injunction may be issued to stop any activity not in compliance with this Act. Penalty amounts and its collection shall be instituted in Tribal Court.

Other Remedies. Nothing herein contained shall prevent the Tribal Community from taking such other lawful action as is necessary to prevent or remedy any violation.

Emergencies

Upon discovery of a water quality violation which poses a serious threat to human health, the Health Administrator or Planning Director shall be authorized to issue a Cease and Desist Order for the immediate closure of any enterprise or cessation of activity within 24 hours, or permit suspension, which constitutes or causes a violation.

Such an Order shall be temporary and be in effect no longer than seven days unless the Board finds that the Order should be extended. Failure to comply with any temporary orders issued under this subsection shall constitute a separate violation.